A LETTER

TO THE

RIGHT HON. LORD ASHBURTON,

SUGGESTED BY

THE QUESTIONS

OF

INTERNATIONAL LAW,

RAISED

IN THE MESSAGE

OF

THE AMERICAN PRESIDENT.

BY

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"Nec ullum, satis validum imperium erat coercendis seditionibus populi, flagitia hominum ut cærimonias Dêum protegentis."

TACITI ANNALES, l. iii. c. 60.

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SYNOPSIS.

Introduction—Sanctity of the Law of Nations—Questions at issue between Great Britain and the United States—Self-preservation and inviolability of territory principles of public law—Preference given to the former in case of conflict—Authorities—A State may virtually as well as literally declare its inability to control its subjects—Authorities and illustrations on this point—1. Destruction of the Caroline justified; 2. Macleod's case; 3. American flag abused to cover the Slave Trade; 4. Boundary question—Conclusion.

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A LETTER, &c.

My Lord,

The principal questions at issue between Great Britain and the United States of North America, which it is the object of your lordship's mission to adjust, involve a consideration of the principles of that law which has necessarily occupied a large sharge of my professional studies. I therefore hope to be excused for the liberty of addressing, in the form of a letter to your lordship, some reflections on those parts of the recent Message of the American President, which relate to the existing differences between the Cabinets of Washington and St. James. And it may, perhaps, be permitted to me, before I enter upon the discussion of these particular topics, to offer a few preliminary remarks upon the general

magnitude and importance of the subject entrusted to your lordship's negociation.

The increasing reverence paid in modern times to that part of morality which regulates the intercourse of independent states, is not the least among the many circumstances which mark the progress of Christendom in refinement and civilization. It is the glory of the age in which we live, that the principles of international law have acquired the precision and stability of positive enactment. It may be true, that despite has been occasionally done to these principles, but so may the precepts of municipal law be sometimes evaded or infringed in countries where they are generally cherished and obeyed. It may be true that signal violations of this law are written on the page even of recent history, but he has been a careless and indocile reader who has not perceived that they are written for our admonition. The events of the last seventy years are fraught with lessons, that such violations are sooner or later avenged on the heads of those who perpetrate them. In every instance the severest measures of retributive justice have amply vindicated the eternal majesty of that law, which, for purposes of short-sighted selfishness, had been trampled underfoot; and, in spite of certain exceptions, the Law of Nations has been for many years, and is at this moment, very generally

cultivated and respected; its power has been upheld and acknowledged even by those who have broken through its obligations, inasmuch as they have invariably sought to shelter their infractions under some misinterpretation of its letter, or some partial and distorted construction of its spirit, rather than under an open defiance of its principles. No nation can now venture openly to despise its sanctions. Such, indeed, have been, in former times, the attempts of arbitrary will, conscious that its condemnation was to be found in the digests of those great writers, whose deep thought and irresistible reason it strove to ridicule as the science of theoretical pedants. It is not so now. While the commonwealth of Christendom is true to itself, no power can be so absolute as to defy with impunity the decisions of this tribunal. There is a growing conviction among the wise and good in both hemispheres, that to the conscience of nations may be applied the profound and beautiful remark on the conscience of individuals, "Had it strength as it had right; had it power as it had manifest authority, it would absolutely govern the world."* To enumerate the various causes which may have contributed to this desirable result, would be without the scope and exceed the limits of these remarks,

* Bishop Butler, Sermon III., on Human Nature.

but among them would certainly be reckoned the rise of independent states on the other side of the Atlantic, various in their forms of government, advancing daily in commercial wealth and national greatness, rich in the elements of moral power, and though comparatively unprovided with the equipment of immediate war, affording at all times a powerful means of adjusting, by their alliance or interposition, the equipoise of the civilized world. To no people can the maintenance of International Law, the vital principle of which is, that neither the form of government nor the relative strength or weakness of kingdoms, creates any distinction of right, be of nearer interest or greater importance. "Quoique les Americains, (says their eloquent panegyrist,) soient pour ainsi dire seuls sur le continent, le commerce leur donne pour voisins tous les peuples avec lesquels ils traffiquent. Malgré leur isolement apparent les Americains ont donc besoin d'être forts."* In the North American Republic we accordingly find a very general study of jurisprudence, and we are indebted to their citizens for many treatises † on the Law of Nations, valuable, even if they had no other merit,

* De Tocqueville, de la Démocratie en Amérique, tome iii. p. 223.

† See the Commentaries of Mr. Chancellor Kent, Mr. Justice Storey, and Mr. Wheaton.

for their tendency to imbue the public mind with the elements at least of this science, however much the thorough mastery of it may belong to an intimate acquaintance with the original writers, whose appearance deters from their perusal a fastidious epitome-loving age, impatient of prolixity, and intolerant of the ponderous volumes which contain the fruits of their wisdom. Now if it be the interest as well as the duty of the United States of America to exhibit a practical obedience to the law of nations towards all countries, it is most especially so in their conduct towards Great Britain. It is almost needless to say that the converse of this proposition is true, that the observation is equally applicable to England, that the coincidence of duty and interest is not less palpable in her case than in that of North America. For to pass over the ties of affinity, of common origin, common language, many common institutions, and a most closely interwoven commercial interest, it is sufficient to observe that these two countries have *conterminous* possessions, and therefore every infraction of right cannot fail to be immediately felt and resented, while its consequences may be incalculable. To avert, indeed, so horrible a calamity as war between two countries under such relations to each other, it would become the magnanimity of both to pass

over many little affronts, many petty provocations, which might arise from the indiscretion or insubordination of their respective subjects. Their honour stands on too firm a basis to be blown away by the breath of every hot-headed and ignorant babbler, or to be injured by the insignificant and unauthorised misdemeanors of the outcasts of society, whose interest is havoc, and whose delight is confusion.

But it must be admitted that there are offences which may not be so treated—offences for which a country which did not seek and enforce reparation would forfeit all reputation among civilized nations, and as an infallible consequence invite oppression, would lose all security for national independence, and retain the name without the reality or benefit of peace.

It cannot, I think, be denied, that the offences which are at this moment the subject of complaint and remonstrance between the United States and Great Britain are of this description. They charge* us with the grievous crime of violating a most sacred national right — the independence of a pacific territory—and of accompanying the outrage with the aggravated circumstances of destroying the lives and property of their subjects. We, on the other hand, bring against them the accusation of receiving,

* See extract from the recent Message of the American President in the Appendix.

fostering, and abetting traitors in open arms against their sovereign, *the ally* of America; and of imprisoning for several months, and ultimately trying for his life, a British officer, for obeying the commands of his lawful superior, and of continuing to do so after it had been formally notified to them that the act for which this treatment was inflicted, was not the act of an individual, but of his Government. Much irrelevant virulence and idle declamation has been expended on these subjects, but there is only one tribunal before which independent states can plead—and this is, the Law of Nations: in order to obtain its decision, we must first state the facts of the case, and then apply to them the principles of that law.

First, then, as to the facts of the case.

Towards the close of the year 1837,* a small portion of the *habitans* of *Lower* Canada, a virtuous and well-disposed people, whose ignorance and simplicity rendered them an easy prey, were instigated by the restless machinations of certain disaffected demagogues, to rebel against their lawful and constitutional Government. The revolt was suppressed in a few weeks from

* See the Annual Register for 1838; and Dispatches from Sir F. B. Head, Bart., K.C.B., relative to Canada, ordered by the House of Commons to be printed 22nd March, 1839. See extracts in Appendix.

its commencement with a very inconsiderable loss of life to the king's troops. The deluded people found themselves generally deserted by the cowardly traitors who had instigated them, and returned, with dearly-bought experience, to their former allegiance. In the meanwhile the spirit of mercenary sedition (for it deserved no other name) had with difficulty blown into a flame some sparks of disaffection in the *upp* province of Canada, which borders upon the territory of the United States. This attempt wa more abortive than the one already mentioned; it met with no kind of sympathy from the mass of the people of the province, who were, as the result proved, sincerely attached to the British constitution. The loyalty and fidelity of the native militia and volunteers, unaided by any regular forces, quickly dispersed the rebels. This outbreak took place on the 29th of November; and on the 8th of December the governor of the province dismissed the greater part of the militia. The chief action was at a place called Montgomeries' Tavern, near Toronto, which was not attended with loss of a single man to the royalists. The prisoners were immediately released and dismissed to their homes, and before the lapse of a week perfect tranquillity was restored to the province—with one memorable exception—in the river of St. Lawrence, which

separates the state of New York from Upper Canada, lies a small wooded island, called Navy Island, belonging to the latter country. On the 13th of December, this spot was seized by a large body of armed men, among whom some, indeed, were Canadian rebels, but by far the greater part were citizens of the United States.* In order to throw some light on this unparalleled outrage, we must for an instant retrace our steps in this narrative. After the total rout of the rebels, on the 8th of December, at Montgomeries' Tavern, the leader and instigator of the tumult deserted, like his brethren in Lower Canada, the people who he had seduced from their allegiance, and took refuge in the county of Buffalo, in the state of New York. During the interval which elapsed, between the 8th and 13th of December, he had succeeded in stimulating a large body of evil-minded and reckless American adventurers to attempt the invasion of *Upper* Canada, alluring them by the hopes of becoming possessors of that territory, which was to be divided, *according to their public proclamation*, as so much booty amongst them.

Great numbers of American citizens publicly enlisted as soldiers with this avowed object; no

* See Dispatches of Sir F. B. Head, already referred to, No. 69, p. 471, 6th March, 1838; and Message of the President of the United States, Dec. 4, 1838.

concealment was pretended: meetings were convened, arms and provision openly distributed for the purpose. To crown all, (though so flagrant an outrage seems, at this moment, scarcely credible,) artillery and ammunitions were, in the face of day, taken from the arsenals of the American Government, in order to be employed in acts of piratical aggression against the subjects and property of an ally with whom "*they were desirous of maintaining the most friendly relations.*"* But is it possible—some stranger to the events of this period will here exclaim—that the American Government took no measures to prevent or to punish proceedings so disgraceful to any civilised community? And the answer must be, that *practically* no such measures were taken. Sundry proclamations were indeed issued discountenancing these outrageous acts, and some kind of military demonstration was made; but no real or effective impediment, it will be seen, was thrown in the way of these piratical hostilities. To say that the American Executive was too feeble, and that these marauders knew and despised its prohibitions, is, as will be hereafter more largely shown, either no answer at all to a foreign state, or such a one, as, by the Law of Nations, justifies that

* See President's Message, December 4, 1838, in Appendix.

state in a course of action otherwise indefensible. By the 13th of December, Navy Island was filled with a numerous force of Americans, among whom was a handful of Canadian rebels. Into this British territory, without the slightest interruption from any constituted American authority, they transported from Buffalo, provisions, stores and artillery, the public property of the United States; they proceeded to throw up defences, and began a series of hostilities against the Canadian side of the river, and at last opened a fire of artillery upon that part which was most thickly peopled. All these proceedings, it may be observed, were strictly aggressive, not a single shot having been returned from the British frontier; while *throughout a whole fortnight*, twenty-two pieces of cannon belonging to the American Government were employed in firing upon the subjects of Great Britain; a landing place on the American shore, called Fort Schlosser, was the chief magazine from which they derived their supplies. On the 28th of December, the commander of the Canadian loyalists received undoubted intelligence that a small steamer, called the Caroline, had been hired by this body of American citizens and Canadian rebels, for the purpose of securing their communication with the main land, and had actually conveyed a small piece of artillery to the island. The resolution was immediately taken

to destroy this instrument of piracy. Never was an act of signal justice executed with more distinguished gallantry* or in a spirit of greater mercy. Two men who fired upon the British officers were of necessity cut down, the rest were driven from her deck, the vessel itself was set on fire, and precipitated down the Falls of Niagara.

The consequences of this act were immediate ; the pirates fled from Navy Island, the plan of invading the Niagara frontiers was abandoned, and the unoffending inhabitants of Upper Canada, after a few more unsuccessful attempts of a like piratical character on other parts of the province, were restored to the blessings and tranquillity of peace.

The proofs that these outrages were in reality perpetrated by American citizens, without whose aid, instigation, and generalship, the handful of Canadian rebels would have sunk into insignificance, may be abundantly collected by the English reader from two distinct sources, the dispatches of the governor of Lower Canada to the British Government in 1838, and the messages of the American presidents in 1838 and 1839. In the appendix to these pages I have inserted

* Yet to this day, Captain Drew, R.N., whose conduct is eulogised in the most glowing terms by the Governor of Upper Canada to the Home Government, has received from them no acknowledgment of his services.

extracts, the length of which would disturb the course of my argument in this place. The following citations will suffice for the present to establish the fact. 'It is proper,'* writes Sir F. Head to Lord Glenelg, 'however, I should inform 'your lordship that as soon as I found that this 'portion of the British Empire was perfidiously 'attacked and assailed by *American* citizens under 'American leaders, termed 'generals,' that artillery 'and muskets were brought against us from the 'state arsenals, that Navy Island, belonging to 'her Majesty, was actually seized by Americans, 'that batteries were formed there, from which shots 'were fired for many days on the inoffensive in-'habitants of this province, and that the Island 'was regularly supplied by boats from the American 'shore with provisions and munitions of war, &c. '&c. While the gunboats were being prepared, the ''American force, under the American commander 'styling himself General Von Rensalaar, continued 'day after day to fire from Navy Island upon the 'unoffending inhabitants of the Niagara frontier, 'although not a gun had been fired on the part of 'the British, although the American forces in that 'island were daily increasing, and although a 'steam-boat chartered by these pirates was actually 'employed in transporting to the island munitions 'of war, &c.' And again, in his address to the

* Dispatches already referred to, page 466.

parliament of Lower Canada, the governor remarks, 'With scarcely an exception, every go-'vernment arsenal from Lake Champlain to Lake 'Michigan has within the last two months been 'broken open and plundered, to furnish arms for 'the invasion of this portion of the British 'Empire; and however the circumstances may 'be explained, it is certainly a remarkable fact 'that all these robberies have been effected with-'out the sacrifice of a single life, and without 'even the imprisonment of the person who is 'notoriously the instigator of them.' The President of the United States, in his message to the two houses of Congress, Dec. 4, 1838, remarks, 'I had hoped, that the respect for the laws 'and regard for the peace and honour of their own 'country, which have ever characterized the 'citizens of the United States, would have pre-'vented any portion of them from using any means 'to promote insurrection in the territory of a 'power with which we are at peace, and with which 'the United States are desirous of maintaining 'the most friendly relations. I regret, deeply, 'however, to be obliged to inform you, that this 'has not been the case. Information has been 'given to me, derived from official and other 'sources, that many citizens of the United States 'have associated together to make hostile incur-'sions from our territory into Canada, and to aid

'and abet insurrection there, in violation of the 'obligations and laws of the United States, and 'in open disregard of their own duties as citizens. '*This information has been, in part, confirmed by* '*a hostile invasion actually made by citizens of* '*the United States, in conjunction with Canadians* '*and others, and accompanied by a forcible seizure* '*of the property of our citizens, and an applica-* '*tion thereof to the prosecution of military opera-* '*tions, against the authorities and people of Canada.*

'The results of these criminal assaults upon the 'peace and order of a neighbouring country have 'been, as was to be expected, fatally destructive 'to the misguided or deluded persons engaged in 'them, and highly injurious to those, in whose 'behalf they are professed to have been under-'taken.'

It is manifest then that the American Government was not in ignorance of these proceedings on the frontier, and therefore from a consideration of this short and simple statement of facts, only one of two conclusions can, I think, by possibility be deduced with respect to its conduct: 1. That being aware of the hostilities exercised by its citizens against Great Britain, the American Government did not think proper to repress them. 2. That although aware of, and anxious to repress them, it was physically unable to execute its intention.

Now, whichsoever of these hypotheses be true, Great Britain may look with confidence to the Law of Nations for a complete justification of her conduct. In the former case (which is too monstrous to be supposed, and is only stated for the sake of the argument) she would have been unquestionably authorized in making immediate war on the United States: such conduct is pronounced* by all jurists to be one of the justest causes of war, and it would be an idle waste of time to accumulate authorities for the establishment of so self-evident a proposition. In the latter alternative, which should seem to have been that which actually occurred, we have to show that she was warranted by the Law of Nations in the destruction of the American steamer and in passing the boundary of the American frontier.

Now the Law of Nations† "grounded upon justice, equity, conscience, and the reason of the thing, and confirmed by long usage," undoubtedly ranks inviolability of territory among its most sacred principles,‡ but it is because this inviola-

* See the shortest and clearest statement in Bynkershoek, Quæst. Jur. Publ., l. i. c. ix., "de statu belli inter non hostes."

† See the Duke of Newcastle's celebrated answer to the Prussian memorial concerning neutral ships, drawn up by Mr. Murray, (Lord Mansfield) Sir G. Lee, and Sir Dudley Ryder, termed by Montesquieu, "réponse sans replique." - Lettres Persannes, l. xlv.

‡ Vattel, l. 2, c. 7, s. 93.

bility must, generally speaking, be an essential condition of national *security*. Self-preservation is considered as a primary object by all law, whether of international for the state, or of municipal for the individual.

'Tous les hommes,' (says Vattel,* concisely expressing the opinion of his predecessors,) 'et 'tous les Etats ont un droit parfait aux choses sans 'lesquelles il ne peuvent se conserver, puisque ce 'droit répond à une obligation indispensable.' And again :† 'C'est en vain que la nature prescrit 'aux nations, comme aux particuliers, le soin de 'se conserver, celui d'avancer leur propre perfec- 'tion, et celle de leur Etat, si elle ne leur donne 'pas le droit de se garantir de tout ce qui peut 'rendre ce même soin inutile. Le droit n'est autre 'chose qu' une faculté morale d'agir, c'est-à-dire 'de faire ce qui est moralement possible, ce qui 'est bien et conform a nos devoirs. Nous avons 'donc en général le droit de faire tout ce qui est 'necessaire à l'accomplissement de nos devoirs. '*Toute nation, comme tout homme, a donc le droit,* '*de ne point souffrire qu' une autre donne atteinte à* '*sa conversation, à sa perfection, et à celle de son* '*état, c'est à-dire, de se garantir de tout lesion* '(sec. 18). C'est ce droit de se garantir se toute 'lésion, que l'on appelle *droit de sreté, &c. &c.*

'Le (moyen) plus sûr est de *prévenir la mal,*

* Vattel Preliminaires, vol. 1, page 49, oct. ed.

† Vattel, l. 2, c. 4, s. 49.

'quand on le peut. Une nation est en droit de 'resister au mal qu'on veut lui faire, d'opposer la 'force, et tout moyen honnête à celle qui agit 'actuellement contre elle, et même d'aller au-devant des machinations en observant toutefois de 'ne point attaquer sur des soupçons vagues et in-'certains, pour ne pas s'exposer à devenir elle-'même un injuste aggresseur. Quand le mal est 'fait, le même droit de sûreté autorise l'offensé à 'poursuivre une réparation complète et à y em-'ployer la force, s'il est nécessaire.' And Klüber* yet more forcibly: '*L'obligation de se 'conserver soi-même l'emportant sur toutes les 'autres, la lesion de quelque droit que ce soit doit 'être excusée, si dans en cas de nécessité evidente, 'et absolue un état placé entre quelque obligation, 'envers un autre état et celles que lui impose la 'propre conservation donne la préférence à la 'dèrniere*, &c. &c.' So Vattel, speaking of a conflict of duties, says, 'Pour ce qui est des 'lois en particulier, on doit sans doute la pré-'férence aux plus importantes et aux plus néces-'saires. C'est ici la grande règle dans leur con-'flit, celle qui mérite le plus d'attention; et c'est 'aussi celle que Cicéron met à la téte de toutes 'les règles qu'il donne sur la matière.* C'est 'aller contre le but général du législateur, contre 'la grande fin des lois, que d'en négliger une de

* Klüber, Droit des Gens, ch. i, p. 75.

'grande importance, sous prétexte d'en observer
'une autre moins intéressante et moins nécessaire.
'C'est pécher en effet ; car un moindre bien, s'il
'en exclut un plus grand, revêt la nature du mal."

All the previous writers on International Law might be cited for the same purpose, viz. of proving that in such a conflict of duties, that of self-defence, sometimes called also the law of necessity, is paramount to that of abstaining from the invasion of an independent territory. Such a conflict indeed, happily for the peace of the world, can seldom arise. It is as clearly the duty of the injured nation, to seek, if it be possible, redress at the hands of the government of the offending party, as it is of an individual to have recourse to his magistrate in a case of domestic aggression. The case which

* Primum igitur leges oportet contendere, considerando utra lex ad majores, hoc est, ad utiliores, ad honestiores, ac magis necessarias res pertineat. Ex quo conficitur, ut si leges duæ, aut si plures, quotquot erunt, conservari non possint, quia discrepent inter se, ea maxime conservanda putetur, quæ ad maximas res pertinere videatur.—*Cicer. ubi supra.*

Jure naturæ vis injusta repellitur qua tenus vis, Jure Gentium qua tenus injusta. Ex Jure naturæ licet propulsare quodcunque inimicum est nullo discrimine æqui vel iniqui ex Jure Gentium adhibito—Jus gentium duntaxat permittit se suaque tueri adversus ea quæ inique et injuriâ inferuntur.—Bynkershoek Observationes Juris Romani, cap. ii. (vol. ii. quarto ed.) Tit. Propulsatio vis atque injuria quo sensu Juri Gentium tribuatur—in l. 3 ft. de Just. et Jud.

justifies the invasion of territory, must be, in the language of the recent message of the American President, "of most urgent and extreme necessity"—in the yet more emphatic language of Mr. Burke, "one which is not chosen but chooses." But the law of nations does not leave us without a guide for ascertaining when such a contingency may have occurred; treating states, according to its just and beautiful metaphor, as moral persons, it has allotted some elaborate chapters to this subject, considering in the language and by the maxims of the Roman law,* "quando† liceat unicuique sine judice se vindicare." One eminent Publicist‡ closes his observations in a chapter "on the just self-defence of one's self," with these words: 'And therefore, although an intelligent 'judge will be best able to decide on the innocency 'of my defence, from the circumstances of the 'particular facts, yet we think it may be asserted 'in general, that the *exact time when a man may* '*fairly destroy another in his own defence, begins*

* "In iis quæ sola ratio commendat a Jure Romano ad Jus. "Gentium tuta sit collectio."—Bynkershoek ii. Quæst. Jur. Publ. c.iii. So Lord Stowell in the Maria Paulsen.—1 Robinson's Reports, p. 340.

† Cod. l. 1.

‡ Puffendorffius de jure naturæ: et gentium l. 2. c. v., de defensione sui, s. 8. I have cited Puffendorf because Barbeyrac, in his well-known commentary on Grotius, refers to him with much praise on this particular subject.

'*at the instant when the aggressor, shewing plainly* '*his design upon my life, and being furnished with* '*strength and weapons for its execution, is already* '*in possession of a place where he may execute the* '*mischief which he contemplates;*' and again, 'nor 'am I obliged to wait till he comes within gun-'shot, but may prevent him with my arms before 'he can use his own; this is what the law calls 'occurrere* in tempore,' which it pronounces to be 'melius quam post exitum vindicare;'—the con-'tinuance of this time for innocent defence is till 'the aggressor either is repulsed or hath retreated 'of his own accord.' This principle of *prevention*, derived originally from the written reason of the Roman law concerning a "damnum† infectum," is adopted by all writers on Public Law. Thus, the father of jurists observes, "The 'primary cause of a just war, is an apprehension 'of an injury about‡ to happen, threatening either 'our persons or our property;" and his perspi-'cuous commentator Heineccius, remarks, "That 'any imminent peril, provided it be really immi-'nent and not a mere suspicion, is a justifying 'cause of war; for instance, not only when a 'neighbour makes openly warlike preparation

* Cod. l. 3. t. 27.

† See Burke's Letters on a Regicide Peace.

‡ Grotius, l. 2, c. 1, s. 82. Prima igitur causa justi belli injuria nondum facta quæ petit aut corpus aut rem.

§ Droit des Gens, 2d. partie, tit. i. ch. 1. s. 43.

'against me, but when in various matters he ma-
'nifests a hostile mind towards me, there is no
'doubt I may lawfully prevent him.' 'Chaque
'état (says Kluber) est en droit non seulement de
'*prevenir*, toute lesion immédiate on médiate, des
'droits qui lui assurent se conservation et sa duree,
'l'aquisition de certains objets sa reputation etc.
'mais aussi de se faire raison soi-même, de tout
'prejudice portè à l'exercise de ses mêmes droits.'

We have seen, then, that the Law of Nations considers, first, the right of self-preservation as prior and paramount to that of inviolability of territory—secondly, that in a conflict of duties it would justify the maintenance of the former at the expense of the latter; thirdly, that it has laid down certain *criteria* whereby to judge when such a case of necessity has or has not arisen. Now I would earnestly entreat any impartial person to apply this law to the facts stated in the foregoing pages, to try them by that test, and then to pronounce, whether, when Navy island was occupied by a large proportion of Americans mingled with Canadian rebels, possessed of American artillery, fired day and night upon the British frontier, and whether, then, this desperate gang of adventurers was supplied with food and arms by an American steamer, the destruction of that steamer (whether on the American or the British side of the St. Lawrence) was not an act of self-defence as justifiable on the part of the government of a state as it would be in

an individual to destroy a bystander, who continually supplied his adversary with a new sword when his own had been wrested from his grasp. It should be further observed, that the close vicinity of America and Canada, the very narrow boundary by which they are separated, renders the *dicta* of jurists, with respect to the rights of self-defence, applicable in the most stringent manner to these *conterminous* States. The American President says,* "When *border collisions* come to receive the sanction, or to be made on the authority of either government, general war must be the inevitable result." It would be very difficult, and very far from my intention, not to subscribe to this opinion. But "border collisions" would scarcely convey to any simple person's mind the idea of the very particular contingency of rebels in open war against their Sovereign, aided and abetted by the citizens of a conterminous ally of that Sovereign. In such a case, the last persons to complain, that in order to prevent so grievous an evil the exact line of demarcation had been transgressed, should be the government of that ally, which, after repeated application, had been, not unwilling but unable, to restrain its subjects from the commission of so disgraceful an outrage.

This last remark brings me to the consideration of an objection which I presume, from the

* Message for 1841. See Appendix.

President's message, would be urged against the whole of this reasoning. America, it will be said, was neither unwilling nor unable to curb her own citizens, and therefore that there was no excuse for our assumption of her authority. The language of the President is as follows: 'In the 'view taken by the government, the enquiry whe- 'ther the vessel was in the employment of those 'who were prosecuting an unauthorized war (rather 'a gentle phrase for abetting a treasonable sedition) 'against that province, or was engaged in by the 'owner in the business of transporting persons to 'and from Navy Island in hopes of private gain, 'which was most probably the case, in no 'degree alters the real question at issue between 'the two governments. The government can 'never concede to any foreign government 'the power, *except in a case of most urgent* '*and extreme necessity*, either to arrest the per- 'sons, or to destroy the property, of those who 'may have violated the municipal laws of such 'foreign government, or have disregarded their 'obligations arising under the law of nations. 'The territory of the United States must be re- 'garded as sacredly secure against all such inva- 'sions *until they shall voluntarily acknowledge their* '*inability to acquit themselves of their duties to* '*others.*' It has been my endeavour to show that this exception of "a most urgent and extreme necessity" did exist in this case, and

therefore, that the destruction of the Caroline fell even within the definition of legality allowed by the President; and, perhaps, the defence of the act complained of might be allowed to rest on the argument already adduced on this point; but here I must observe that both the Law of Nations, and the exception allowed by the President, would have fully justified the British authorities in crossing the St. Lawrence, even at the time of the plunder of the state arsenal, and in *preventing* the cannon of the American government from being fired upon her ally. That this course was not taken is characteristic of the spirit of forbearance and moderation displayed by Great Britain throughout the whole of this transaction. But the latter part of the extract of the President's message contains a doctrine so startling in its announcement, and so monstrous in its consequences to the neighbours of the North American republic, that it is of some importance to ascertain whether it has any foundation in Public Law—whether it be undeniable, that however much a state may suffer from the piratical incursions of the citizens of its neighbour, which the feebleness of its executive government renders it incapable of preventing or punishing, that until such government shall "voluntarily acknowledge" what is clear as the sun at noon, and a matter of daily experience, the injured state has no right to give

itself that security which its neighbour's government admits it ought to enjoy, but is not able to guarantee; or whether there be not a *practical* acknowledgment of such inability, which, as much as a voluntary confession, justifies the offended country in a course of action which would under other circumstances be unlawful. Now there is a very important chapter, both in Grotius, and in his commentator Heineccius, entitled—"de pœnarum communicatione" as to when the guilt of a malefactor, and its consequent punishment, is communicated to others than himself; and the question is particularly considered with reference to the responsibility of a state for the conduct of its citizens. The tests for discovering "Civitasne deliquerit an cives?" are laid down with great precision and unanimity of sentiment by all Publicists, and are generally reduced to two, as will be seen by the following extract from Burlemaqui* (who repeats the opinion of Grotius† and Heineccius). 'In civil societies,' (he says,) 'when a particular member has done 'an injury to a stranger, the governor of the com-'monwealth is sometimes responsible for it, so that

* The Principles of Natural and Public Law, by J. J. Burlemaqui, Professor at Geneva. I only possess the English translation, London, 1763. Sir J. Mackintosh calls him "an author of distinguished merit."

† See Grotius de J. B. & P., l. 2. c. 21, de pœnarum communicatione, and the admirable 'prælectiones' of Heineccius on this chapter.

'war may be declared against him on that account. 'But to ground this kind of imputation, we must 'necessarily suppose one of these two things— '*sufferance* or *reception*,* viz. either that the sove- 'reign has suffered this harm to be done to the 'stranger, or that he afforded a retreat to the 'criminal. In the former case, it must be laid 'down as a maxim, that a sovereign who, know- 'ing the crimes of his subject—as, for exam- 'ple, that they *practise piracy* on strangers, and 'being also able and obliged to hinder it, does not 'hinder it, renders himself criminal, because he 'has consented to the bad action, the commission 'of which he has permitted, and consequently 'furnished a just reason of war. The two condi- 'tions above mentioned, I mean the knowledge 'and sufferance of the sovereign, are absolutely 'necessary, the one not being sufficient without 'the other to communicate any share in the guilt. 'Now it is presumed that a sovereign knows 'what his subjects openly and frequently commit; 'and as to his power of hindering the evil, this 'likewise is always presumed unless the want of 'it be clearly proved." So Vattel :† "Si un souve- 'rain qui pourrait retenir ses sujets dans les 'règles de la justice et de la paix souffre qu'ils 'maltraitent une nation, ou dans son corps ou dans 'ses membres, il ne fait pas moins de tort a toute

* 'Patientiâ et receptu.—'Grot. and Heinecc.'

† b. 2, c. 6, s. 72.

'la nation, que s'il la maltraitait lui-même." In order to apply these principles of Law to the case before me, I am anxious, even at the risk of wearying your Lordship by repetition, to recapitulate in this place as briefly as possible *the facts* which preceded the destruction of the Caroline. Now that the British rebels found 'reception' in the American territory, that they there by 'sufferance' of the State—(whether through the feebleness or intention of the American Executive, matters not)—combined with a body of American citizens long and well known by the name of 'sympathizers,' (which, translated into English, means, 'abettors of the British conspirators against their government,) are assertions proved by the ineffectual proclamations of the American government, 'telum imbelle sine 'ictu,' and the remonstrances and statements of the governor of Upper Canada.—By the fact, that these citizens of the United States *publicly advertised* in America for adventurers to enlist with them, with the promise of parcelling out the conquered province of Upper Canada among their followers. By the fact, that for *two whole months* the American state arsenals were openly pillaged by these persons. And, lastly, by the very eloquent fact, that *after we had destroyed the Caroline, and thereby dislodged the banditti from Navy Island*, their leader, an American, Von Rensalaar, was arrested by the American

authorities, who, at the same time, repossessed themselves of some portion of the artillery of the state. Who would recognize the case described by the American President? "An outbreak on the frontier, which neither (government) might be able to suppress in a day," in these deliberate, long-projected, unprevented preparations for overthrowing the British government of the Canadas.*

Surely if ever a Government may be said *virtually* and *practically* "to acknowledge their in-"ability to acquit themselves of their duty to others," such an acknowledgment is to be found in the state of anarchy and license which has been described; and can it be seriously contended by the American Government—can it be meant by the words "voluntarily to acknowledge," that such frequent and flagrant outrages are neither to be prevented nor punished by the injured nation, until the Government of the offenders declares *in so many words* its incapacity to discharge its functions. Would the Law of Nations be really based "on justice," and "the reason of the thing," if it sanctioned so unjust and irrational a doctrine.

Vattel maintains a very different opinion: "*Il est certain que si mon voisin donnait retraite à mes ennemis lorsqu'ils auraient du pire et se*

* President's Message for 1841.—See Appendix.

* "Et cum Jus Publicum bifariam accipiatur vel de eo 'jure quo *ratione magistrâ inter gentes obtinet.*" &c. &c.—Bynkershoek, Quæstiones Juris Publici. Ad Lectorem.

'*trouveraient trop faibles pour m'échapper, leur* '*laissant le temps de se refaire, et d'épier l'occasion* '*de tenter une nouvelle irruption sur mes terres,* 'cette conduite, si préjudiciable à ma sûreté et à 'mes intérêts, serait incompatible avec neutralité. 'Lors donc que mes ennemis battus se retirent 'chez lui, si la charité ne lui permet pas de leur 'refuser passage et sûreté, il doit les faire passer 'outre le plus tôt possible, et *ne point souffrir* '*qu'ils se tiennent aux aguets pour m'attaquer de* '*nouveau*; *autrement il me met en droit de les* '*aller chercher dans ses terres. C'est ce qui arrive* '*aux Nations qui ne sont pas en état de faire res-* '*pecter leure territoir*; le théâtre de la guerre s'y 'établit bientôt; on y marche, on y campe, on s'y 'bat comme dans un pays ouvert à tous venants.'*

For the very delicate question, to which the events of modern times have given rise, viz. as to the precise time when colonies which have renounced their allegiance to the mother-country, shall be treated by foreign nations as independent states; no direct solution is to be found in the law of nations, for it was an event not contemplated by any of the older publicists; but the case has been decided by the general analogy of the law, that is to say, by the actual *de facto* establishment of their independence. This was the case of the Spanish Colonies in South America. 'It is 'one question,' (said Mr. Canning,) 'whether the

* l. iii. h. vii. sec. 133.

'recognition of the independence of the Colonies 'shall take place, Spain being a party to such re-'cognition; and another question,—whether Spain, 'withholding what no power on earth can necessarily 'extort by fire, sword, or conquest, if she maintain 'silence without a positive refusal,—other coun-'tries should acknowledge that independence.' I believe the United States did not delay the recognition of the South American Republics till the mother-country was pleased "to acknowledge its inability." In both cases "the reason of the thing" dictates that there is a virtual as well as a literal confession of incapacity warranting the otherwise illegal act of a foreign state.

In 1826 that "*casus fœderis*" arose, which induced Great Britain to send troops to Portugal: it was held to be no excuse for the Spanish Government that they had not formally authorised the mustering and equipment of Portuguese rebels on the Spanish frontier; it was thought enough to justify us in a manifestation of hostilities against Spain that she had suffered Portuguese rebels to be armed and equipped in her borders, and from thence to carry fire and sword into Portugal. If the steam-vessel which unconsciously conveyed the unhappy and misguided Louis Bonaparte to the point of debarkation at which he begun his insane attempt

had intentionally facilitated his undertaking, had landed him on a small island (if there were any such) within gunshot of Boulogne, crowded with English pirates and French rebels preparing to invade France, and meanwhile constantly firing upon the town,—if the vessel had returned to Dover, and made sundry expeditions to the island, sometimes laden with provisions, and sometimes with artillery plundered in open day from the castle at Dover,—and if the French Government, having ascertained this to be the fact, and that the whole line of British coast was swarming with French refugees and British adventurers congregated for the invasion of France, and having obtained from the Cabinet of St. James, nothing but public proclamations against this state of intolerable anarchy ;—if, under these circumstances, an officer in the employment of the French Government, had boarded, captured, and sunk the British steamer within cannon-shot of the British shore—I cannot think any American jurist would have held Great Britain entitled to demand satifaction for the violation of its territory,—I think he would have said to those who were of this opinion, 'Why how long 'was the French Government to wait for redress 'against such outrages? till the remaining arsenal 'of the British Government had been ransacked? 'till the impunity of the vessel which supported

'the rebels had encouraged others to engage in a 'similar traffic? and till additional atrocities 'would have required a more awful loss of life 'and greater waste of property for their suppres-'sion? Don't tell me,' he would have said, 'that 'the British Government had never *voluntarily* '*acknowledged their inability to acquit themselves of* '*their duty*; here is a virtual acknowledgment—the 'occasion says so for them, possibly they might 'never chance to say so for themselves.' Now the doctrine of the law of nations, "neque alia lex Romæ alia Athenis," is well-known, and yet this hypothetical case is a mirror to that of the Caroline, except, indeed, that in this latter instance, the necessity of *self-defence* and its corollary *prevention* was more urgent, inasmuch as the St. Lawrence is a boundary more easily and rapidly transgressed than the British Channel. If a war had been recently concluded between Great Britain and America by a treaty of peace, and both parties were watching with anxious eagerness for the slightest infraction of peace, which might give a colour for the renewal of hostilities, the conduct of Great Britain in the affair of the Caroline would not have given a pretext for war even to friends wishing to be enemies. Vattel * expresses himself with his usual

* Vol. ii. p. 165, Vattel.

clearness and more than his usual strength on this point : ' La juste défense de soi-même ne ' rompt point le traité de paix. C'est un droit ' naturel auquel on ne peut reconcer et en promet- ' tant de vivre en paix, on promet seulement de ne ' point attaquer sans sujet, de s'abstenir d'injure ' et de violence. Mais il y a deux maniéres de se ' defendre soi-même, ou ses biens, quelquefois la ' violence ne permit d'autre reméde que la force, ' et alors on en fait usage trèsl égitimement. En ' d'autres occasions, il y à des moyens plus doux ' d'obtenir la réparation du dommage et de l'injure, ' il faut toujours préférer ces derniers moyens. ' Telle est le régle de la conduite, que doivent, ' tenir deux nations soigneuses de conserver la ' paix, quand il arrive que les sujets, de part ou ' d'autre s'échappent à quelque violence. La force ' présente se repousse et se réprime par la force ; ' mais s'il est question de poursuivre la réparation ' du dommage et une juste satisfaction, il faut s'ad- ' dresser au souverain des coupables, on ne peut ' les aller chercher dans ses terres, et recourir aux ' armes que dans le cas d'un déni de justice. *Si* ' *l'on a lieu de craindre que les coupables n'échap-* ' *pent ; si, par exemple, inconnus d'un pays voisin* ' *on fait irruption sur nos terres, nous somme en* ' *droit de les poursuivre chez eux à main armée* ' *jusqu'a ce qu'ils soient-saisis ; et leur souverain ne*

'*pourra regarder notre action que comme une juste*
'*et legitime défense pourvu que nous ne commettions*
'*aucune hostilité contre des innocents.*'

The concluding lines of this extract seem to give an exact description of the state of affairs at the time of the seizure of the Caroline.

The citations which have been made from the law of nations will, I hope, have established the following propositions—that the first duty of a state is to take measures for its own security and preservation—that for the attainment of this object it may, under peculiar circumstances, be justified even in transgressing for the moment its territorial limits—that these peculiar circumstances exist when the neighbour's territory is suffered, whether from the inclination or feebleness of its government, to become not merely the asylum of the defeated foe, but a starting-place from which he sallies forth with renewed vigour, fresh resources, and increased numbers. The circumstances which I have stated would, according to the law of nations, clothe a state, professing to be *neutral* between *two belligerents*, with the character of an enemy ; how much more strongly (for I have purposely understated the case) they stamp such an impress on an ally which has suffered itself to be the instrument of fugitive *traitors* against the government of its *friend*, must be obvious to every one. And, therefore,

Vattel, speaking of the authority which a sovereign ought to exercise over his subjects, and of his responsibility for their actions, remarks,

'Et puisque celui-ci ne doit point souffrir que 'ses sujets molestent les sujets d'autrui, ou leur 'fassent injure boucoup moins qu'ils offensent 'audacieusement les puissancés étrangéres, il doit 'obliger le coupable à reparer le dommage, ou 'l'injure, si cela se peut, ou le punir exemplaire-'ment, ou enfin, selon le cas et les circonstances, 'le livrer a l'Etat offensé pour en faire justice. 'C'est ce qui s'observe assez généralement a 'l'égard des grands crimes, qui sont egalement 'contraires aux lois de sûreté de toutes les nations. 'Les assasins, les incendiaires, le voleurs sont 'saisis partout à la requisition du souverain dans 'les terres de qui le crime a été commis, et livrés 'à sa justice. *On va plus loin dans les Etats qui 'ont des relations plus étroites d'amitié et de bon 'voisinage.'* *

If then the statement of facts given in these pages be correct, it will appear to all who are conversant with the principles of International Law, that far from invading the rights of another nation, Great Britain has magnanimously forborne to exercise the "summum jus," to which

* The American jurist Mr. Chancellor Kent carries this doctrine to its fullest extent. Kent's Commentaries, vol. i. p. 24, lecture ii.

by that law she was entitled. She might have said to the United States, Inasmuch as you have not only opened an asylum to the deadliest enemies of your ally, but inasmuch as in your bosom they have concerted their plots against our life, and armed with your weapons, strengthened by the adherence of many, and actually under the generalship of one of your citizens, they have carried fire and sword into our country; you have given us a specific definite cause for war, known and acknowledged by the law of nations, and we will inflict upon you its retributive justice until you make reparation for these outrages.* But Great Britain saw that the American government did not entertain any hostile *animus* towards her—that these violations of right were committed, not in consequence, but in spite of their commands; that the feebleness, and not the *mala fides*, of the American Executive suffered her citizens to set at nought with impunity her public proclamations. Great Britain felt that under these circumstances it would be an ungenerous part to exercise her extreme right

* "Eorum qui a bello abstinent officium est nihil facere, quo validior fiat is, qui improbam foret causam, aut quo justum bellum gerentis motus impediantur."—Grotius de Jure Belli et Pacis, l. iii. c. xvii. s. 3.

"*Quomodocunque* enim alteri contra alterum succurramus, *bello nos interponimus*, quod salvâ amicitiâ non licet."—Bynkershoek Quæstiones Juris Publici, l. i. c. ix.

against a nation to whom she was bound by no common ties of amity; she trusted that this defect in their constitution (a defect which, as it leaned to the excess of freedom, she must regard with an indulgent eye) would induce her legislature to administer the proper remedy, and she contented herself with only taking such steps as were absolutely necessary for her own security. Such conduct was worthy of a great and generous nation; she might reasonably have hoped that it would be so considered by the United States.

But that a nation so leniently treated should formally complain of a violation of her strict territorial rights, recalls to our recollection the severe comment of Tacitus on the abused *asyla* of the Greek temples, in which the outcasts of society found shelter from punishment, and prepared for the perpetration of new infamies: "Complebantur templa pessimis servitiorum eodem subsidio obærati adversus creditores, suspectique capitalium criminum receptabuntur, *nec ullum satis validum imperium erat coercendis seditionibus populi flagitia hominum ut cærimonias Deûm protegentis.*"

I have said that Great Britain exercised a wise magnanimity in forbearing, under the circumstances, to exact the full reparation to which her wrongs entitled her. I think so, because her

honour (which it must be remembered is the security of nations) was in no wise tarnished.

I wish the same opinion could be expressed with respect to the next injury, intimately connected with the foregoing circumstances, which she sustained at the hands of the United States—I mean the trial of Mr. Macleod. The particulars of this case have obtained too melancholy a notoriety to need more than a brief statement in this place. This gentleman, some time subsesequent to the transactions related in these pages, was arrested in the State of New York on a charge of murdering a man of the Caroline, who was cut down while resisting the attack of Captain Drew. The British government, on receiving intelligence of his arrest, notified to the government of the United States that the seizure of the Caroline was a national act ordered and sanctioned by the government, and, consequently, for which, according to every principle of law ever yet heard of, the British Government was alone responsible.

The American Executive demanded the transfer of the case from the court of New York to the Federal judiciary, (whether with the intention of releasing the prisoner or not is immaterial,) the court refused its application, and after many months' confinement in prison, with the peril of death impending over him, Mr. Macleod was

brought to trial and finally acquitted ; not because the seizure of the Caroline was an act of the British government and not of the individual, but because Mr. Macleod was not present at or concerned in the event. Of course, the fact and grounds of the acquittal can in no way affect the question of this grievous violation of the Law of Nations—for such in truth it is. It is long since Christendom has seen an act more unjust in its theory, or more pernicious in its consequences. Its theory is, that the subject is individually responsible for being the instrument of executing the commands of his lawful sovereign—a theory repudiated by every moralist, publicist, or statesman of every civilized land ; its consequences must be, to keep perpetually alive the most exacerbated feelings of hostility, to necessitate continual war on the part of the state in defence of its subject, and to replunge nations into that barbarity of feudal times, for their deliverance from which they were mainly indebted to the adoption of those wise and just principles of jurisprudence which consider the act of the subject executing the orders of his sovereign as matter of adjustment between the governments of states, and not of personal vengeance against the individual. Let us suppose that war had been promulgated between the United States and Great Britain at the time of the seizure of the Caroline; that a

treaty of peace had been subsequently concluded between the belligerent parties; and that, after the conclusion of such treaty, the arrest and trial of Mr. Macleod had taken place. Such a glaring atrocity would require only to be stated to be condemned, and yet the principle is the same in the hypothetical case, as in that which has actually occurred. Great Britain forbore to execute her "summum jus" of war, but self-defence gave her, *pro tanto*, belligerent rights; and the recognition by her government of the capture of the Caroline invested those concerned in that act with precisely the same character as if they had been the servants of a belligerent country.

Our minister at Washington should have been directed, I must think, to demand his passport the very moment the liberation of Mr. Macleod had been refused. It must ever seem to me that the ruling powers of Great Britain abandoned, in this instance, the most sacred obligation of a government, the protection of an innocent subject, and forgot what was due to national honour and security, when they abstained from taking so just and so necessary a measure.

A regard to truth, a deep veneration for the guardian principles of society, extorts from me this reluctant avowal. Nevertheless, I must observe that what it behoved Great Britain to have

done six months ago, and what it may become her to do now, form the subject of very different considerations. The peril which threatened the life of her subject has passed away, and the recent Message of the President gives other nations, (and all are equally interested in this matter,) reason to hope that by some * modification of her internal constitution, she is about to secure the civilized world against the recurrence of such an injury; this would be a substantial reparation for what I verily believe was an involuntary wrong; and it would be, I earnestly hope, an unmerited insult to her national character to suppose that she would refuse to accompany an act acknowledged by her to be one "of propriety"† and "necessity," with expressions of

* De Tocqueville seems to have thought such a provision already existed. See his chapter "Différents cas de Jurisdiction." "La personne et la matière devinrent donc les deux bases de la compétence fédérale. Les ambassadeurs representent les nations amies de l'Union; tout ce qui intéresse les ambassadeurs interesse en quelque sorte l'Union entière. Lorsque un ambassadeur est partie dans un procès le procès devient une affaire qui touche un bien-être de la nation—il est naturel que ce soit en tribunal fédéral qui prononce."—*La Démocratie en Amérique,* tom. i. p. 267. See also *Kent's Commentaries,* vol. i., part ii., lecture 14.

† "In cases of this kind a government becomes politically responsible only when its tribunals of last resort are shown to have rendered unjust and injurious judgments in matters not doubtful. (!!) "I cannot fail, however, to suggest to Congress the propriety, and in some

regret for the evil which the want of it had hitherto occasioned.

It is not my intention to do more than refer to the other objects of your Lordship's mission. The boundary question has been already treated with great ability, and a thorough knowledge of the subject in another publication,* and as it seems to be confessed on all sides, that the provisions of the original treaty are impracticable, there can be little doubt that two friendly countries will agree *de novo*, upon such a line of demarcation as may satisfy the fair claims of both to the security of their frontiers. The more delicate and difficult question relating to the right of Great Britain to *ascertain the sincerity of the flag*, admitted by the American ministers to be often fraudulently assumed for the purposes of screening guilt from detection and punishment—the right of Great Britain to prevent her subjects from violating her own laws by an additional violation of those of the United States, is fully

degree the necessity, of making such provisions by law, so far as they constitutionally may do so, for the removal, at the commencement, and at the option of the party, *of all such causes as may hereafter rise, and which may involve the faithful observance and execution of our international obligations*, from the state to the federal judiciary."—*Message of American President for* 1841.

* See the articles in the Quarterly Review for March and December, 1841.

discussed in the correspondence of the courts of St. James and Washington, recently laid before the public. But I cannot refrain from observing that, though I do not yield to Mr. Stevenson in admiration for that masterpiece of judicial eloquence the case of "Le Louis," yet Lord Stowell's judgment is not exactly applicable to the present question. Lord Stowell in that case reversed the sentence of a Vice-Admiralty Court which had *condemned a French ship for being employed in the slave trade, and for forcibly resisting the right of search claimed by the British cruisers.* We do not claim a right to search American vessels for the purpose of ascertaining whether or not they have slaves on board, nor the right of condemning them and liberating the wretched objects of such unholy traffic, if it prove to be the case. We claim only to *verify the fact that they are American* and *not British traders*, or belonging to one of the Powers with whom we have a specific treaty, conferring on us the belligerent right which we do not pretend to exercise towards America; and as Mr. Stevenson admits that we are entitled to ascertain that such parties do not violate the law, it is difficult to see how he can deny us the only means of doing so. It seems as little reasonable as to say, "This spot of ground may be yours, in which case you may exercise over it the full rights of a proprietor, but its pre-

sent occupier asserts that it is ours, and we deny your right to examine into the truth of his assertion." Surely, according to every principle of reason, it would seem that a party interested in the observance of a law, should have the means of ascertaining the fact of its violation.

I cannot believe that the United States will continue to exhibit their policy to the rest of the world, as alone among the nations of Christendom opposing a technical obstacle to the achievement of an unspeakable good, and the destruction of a frightful evil which she has herself repeatedly and vehemently denounced. I feel confident that the North American republic will be convinced that to present the spectacle of so discreditable an anomaly to all other christian communities, is far too dear a price for the maintenance of a point of etiquette, and is inconsistent with the dignity and character of a great nation.

With these observations, my Lord, I will close my remarks on the questions of international law, which are now pending between this country and the United States of America, and which have given rise to your Lordship's embassy. I should much regret if these observations had any other tendency than to facilitate, in however feeble a degree, the success of that mission. It is as far from my intention as it is beyond my power to sound "the blast of war" upon this occasion. I have not

endeavoured to blow the trumpet, or to deserve the epitaph of Misenus. It seemed to me that a calm investigation both of the facts relating to the capture of the Caroline, (the principal subject of remonstrance in the Message of the American President,) and of the principles of public law applicable to these facts, would materially contribute to close the breach between the United States of America and Great Britain. Neither nations nor individuals are disarmed by being disencumbered of their passions; and I thought that if the result of such an investigation should demonstrate, as I humbly hope it has done, that England has conducted herself with singular forbearance and moderation under circumstances of no ordinary provocation towards her kinsfolk in the other hemisphere, that her ambassador would be entitled to a favourable hearing at Washington, and that your Lordship's hands would be strengthened for the conciliatory purposes of your mission. And here I must observe, that your Lordship's appointment itself is not the least among the many evidences of the feelings of amity, respect, and goodwill entertained towards America by this country. That nation is held in no light estimation to whom we send, as the harbinger of reconciliation, the chief of the *Medici* of our country—the possessor of high rank and great wealth, versed in the adminis-

tration of public affairs, necessarily imbued with the principles of commutative justice, habituated to the speculative consideration and practical knowledge, under its most extensive and various bearings, of the commerce which links together the scattered nations of the globe; well aware, therefore, of the inestimable blessings of peace, and of the delusive splendour and lasting evils of war.

That your Lordship's mission may be successful —that Great Britain and the United States may remember the strength of the ties which bind them together—that they may recollect that it is their high calling to show to the other nations of the world the steady beacon of an enduring and rational liberty—that they may feel the indivisible unity of their true interests, and that the only rivalship which becomes them is to provoke each other to an emulation in every art, science, and institution, which may promote the moral greatness of a free people,

"As if a brother should a brother dare,"

is, my Lord, the earnest prayer, of

Your Lordship's obedient servant,

ROBERT PHILLIMORE.

APPENDIX.

I.

Sir F. B. Head to Lord Glenelg.

"I NEED not on this continent declare that the Americans are a people with whom the British empire for many years has assiduously cultivated the most friendly connexion. Our government has looked upon them as its allies; our people have intimately connected themselves with their commerce; our capital has irrigated their land; unlimited credit has been fraternally extended to them, with that unsuspecting confidence which in the civilized world is reposed in men of character and truth; we have rejoiced in their success, and we have done all that a generous nation could do to save them from the expense and misery of war. It is true we were once opponents, but the hatchet of war has long been buried, and I must own I had hoped that the spirits of our mutual ancestors were sacredly guarding its tomb.

"Such are the feelings of the British people towards the Americans, and yet, I regret to inform you, that, in a moment of profound peace and of professed friendship, a considerable number of Americans, regardless of the

crimes committed, as well as of the degraded character of the man, have sympathised with the principal rebel, who has lately absconded as a criminal from our land. I regret to inform you that American citizens of influence and great wealth have come forward to coerce the brave and independent people of Upper Canada to change laws and institutions which they have lately, by open and almost universal suffrage, publicly declared that they prefer.

"The American press has, to my astonishment, in many instances advocated this flagrant act of injustice; and such has been the popular excitement, that not only has a body of Americans, headed by American leaders, within a few days taken possession of Navy Island, (which belongs to the British empire,) but a proclamation has just been issued from this spot declaring that the standard of liberty is planted in Canada; that a provisional government is established there; that a reward of 500*l.* is offered for my apprehension; that 300 acres of her Majesty's lands will be freely bestowed by this provincial government upon any volunteer who shall personally assist in invading our freedom; and it is added, that 'Ten millions of these lands, fair and fertile, will speedily be at their disposal, with the other vast resources of a country more extensive and rich in natural treasures than the United Kingdom or old France.'

"I am informed that Americans from various quarters are hastening from the interior to join this standard of avowed plunder and revolt, that cannon and arms are publicly proceeding there; and under these circumstances, it becomes my painful duty to inform you, that

without having offered to the United States the smallest provocation, without having entertained the slightest previous doubt of the sincerity of American alliance, the inhabitants of this province may in a few days be called upon by me to defend their lives, their properties, and their liberties, from an attack by American citizens, which, with no desire to offend, I must pronounce to be unparalleled in the history of the world.

"Upon the courage and resolution of the Canadian people I place the firmest reliance; and if this unwarrantable invasion should proceed I know I shall not in vain require every British subject coolly to perform that duty to his country which his own pride, spirit, and feelings will spontaneously suggest.

"The interference of foreigners in the domestic policy of a free country is an aggression which no nation of character can ever submit to endure (especially where a band of people, violating their own laws, our laws, as well as the sacred obligations of national amity, intrude themselves upon peaceable inhabitants lawlessly to advocate by force of arms the practical blessings and advantages of republican institutions, which, by their own showing, have at least ended with them in anarchy and plunder;) and as every country is a natural fortress to its inhabitants, as every village is a strong military position, and as every bridge and ravine can be advantageously defended, I must own that, deeply as I should lament a conflict of this nature, I entertain no feeling of anxiety for the result. The peaceful inhabitants of Upper Canada will not be left to defend their country alone, for they belong to an empire which does not suffer its subjects to be injured with impunity; and if a

national war, which it rests with the American government to avert, should be the unhappy consequence of an intolerant invasion of our freedom, the civilized world, while it sympathizes with our just cause, will view with feelings of astonishment and abhorrence this attempt of a body of American citizens treacherously to attack and plunder, in a moment of profound peace, their oldest, their most intimate, and their most natural ally.

"A few days will, I trust, demonstrate that the American government wants neither the will nor the power to control its people. If otherwise, the defensive course which the inhabitants of Upper Canada must be called upon to adopt is plain and clear.

" In the meanwhile, however, it is but justice to the American nation to allow them, notwithstanding our territory has been already invaded by their citizens, the opportunity of nobly vindicating, as I firmly believe they will, the integrity of their government and institutions; and I have to inform you that, with this peaceful object in view, I have communicated with the governor of the state of New York, with whom I have hitherto been on the most friendly terms, as also with her Majesty's minister at Washington; and awaiting their replies, I have reinforced the gallant militia of the frontier by a strong corps of observation, and have made arrangements for a general call upon the militia, in case their services should unfortunately be required."

II.

Sir F. B. Head to Lord Glenelg.

"Toronto, 9th February, 1838.

"My Lord,

"In my despatch of the 10th of January, which contained a copy of my communication to Mr. Fox at Washington respecting the capture of the piratical steam-boat Caroline, I had the honour to mention to your lordship, that in justice to Captain Drew of her Majesty's Royal Navy, and the other officers and men engaged in the service alluded to, I should feel it my duty to bring their conduct before the especial attention of her Majesty's government.

"It is proper, however, I should previously inform your lordship, that as soon as I found that this portion of the British empire was perfidiously attacked and invaded by American citizens under American leaders termed 'generals;' that artillery and muskets were brought against us from the state arsenals; that Navy Island, belonging to her Majesty, was actually seized by Americans; that batteries were armed there, from which shot were fired for many days upon the inoffensive inhabitants of this province, and that the island was regularly supplied by boats from the American shore with provisions and munitions of war, I approved of the recommendation of Colonel Macnab, commanding the expedition of the Niagara frontier, that a naval force or flotilla under officers of experience should be constituted; and feeling it would be unjust that in the name of her Majesty I should require naval officers to leave the backwoods into which they had retired without recognizing them in the professional capacity in which I

had especially called them into action, I directed my military secretary, Colonel Strachan, to forward to Colonel Macnab a written communication, a copy of which is herewith enclosed, directing him to call upon such naval officers in the province as he might deem proper to select, to afford me their services, on the understanding that they would receive their full pay during the period they were thus publicly employed by me on her Majesty's service.

" In consequence of the above communication (which, I at once think it right to acknowledge, contains no authority beyond what the lords of the admiralty may, from the emergency of the case, deem it proper to confirm to it,) Colonel Macnab called upon Captain Drew, R.N., to collect and command a flotilla of gunboats and other craft, to be immediately fitted out for the purpose of attacking Navy Island.

" While the gunboats were being prepared the American force under the American commander, styling himself General Van Ranzalaer, continued day after day to fire from Navy Island upon the unoffending inhabitants of the Niagara frontier, although not a gun had been fired on the part of the British, although the American forces on our island were daily increasing, and although a steam-boat chartered by these pirates was actually employed in transporting to the island munitions of war for the purpose of aggravating the insult which, in a moment of profound peace, had perfidiously been made by American citizens upon her Britannic Majesty's dominions.

" Under these circumstances Colonel Macnab determined, as an act of self-defence, to call upon Captain Drew to capture, burn, or destroy this steam-boat.

" Accordingly, about eleven o'clock of the same night ( ) Captain Drew, with five boats containing nine men each, pushed off from the British shore. The boats were commanded by Captain Drew, R.N., Lieutenant Mac Cormack, R.N., Lieutenant John Elmslie, R.N., Lieutenant Christopher Beer, R.N., and —— Gordon, a commander of a steam-boat.

" The crew were composed of volunteers who embarked in total ignorance of the service in which they were about to be engaged, Captain Drew's requisition having merely stated, that he wanted a few fellows with cutlasses 'who would follow him to the devil.'

" As soon as they were clear from the shore, Captain Drew ordered his followers to rest for a few moments on their oars, and while the current was hurrying them towards the Falls of the Niagara, which were immediately below them, he briefly explained to the crews the duty he required them to perform, and the post respectively to be assigned to each. Silence was then preserved until Captain Drew's boat came within fifteen yards of the steamer, (which was obscurely seen moored to the wharf at Fort Schlosser,) when the sentinel on board in a hurried manner called out, '*Boat ahoy! boat ahoy! who comes there?*'

" A man in the leading boat replied, '*Friend,*' on which the sentinel called for the counter-sign;' 'I'll give it you when we get on board,' replied Captain Drew, who by this time being close to the vessel boarded her on the starboard gangway, and from an over-anxiety in his crew to follow him, it so happened that for more than a minute he was the only assailant on the pirate's deck. Captain Drew there encountered five

men, one of whom fired his musket close to his face; but missing, he (Captain Drew) immediately cut him down. Captain Drew then disabled another of the pirates, and with the flat of his sword driving the other three before him, occasionally hastening them with the point, he made them step from the vessel to the wharf.

" By this time Lieutenant Mac Cormack had boarded the starboard bow, and it being so dark that he could not recognize the men he found there, he asked them '*if they were friends or enemies?*' One of them replied, '*An enemy,*' and immediately firing, shot him through the left arm; Lieutenant Mac Cormack, instantly cut this man down. Several of the pirates then fired upon Lieutenant Mac Cormack and wounded him in five places; yet in spite of this he effectually disabled another of them, and then sinking from loss of blood, the vessel was carried, when Captain Drew immediately ordered a party of his men to cast her off. It was, however, found that she was moored to the wharf by chains from the bow and quarter, which it required nearly fifteen minutes to unloose.

" During this delay the American guard stationed at the inn above Fort Schlopen turned out and commenced firing upon the assailants; in consequence of this Lieutenant Elmslie, R.N., heading a volunteer party of sixteen men, armed with nothing but their cutlasses, advanced about thirty yards towards them, and forming in line, they gallantly stood there to protect the vessel against the American riflemen until the chain cables were cast off.

" The crews now retiring to their respective boats, towed the vessel from the wharf, but the current irrevo-

cably drifting her towards the Falls of Niagara, Captain Drew, assisted by one man, set her on fire, and as soon as she was fairly towed into the stream, the assailants, finding she was more than they could hold, let her go, and giving her three British cheers, they rapidly pulled away for their own shore, while the steamer slowly glided towards her doom.

" A small light glowing within her suddenly burst from her hold, and in a few minutes the pirate vessel, enveloped in flames, was seen hurrying towards the Rapids, down which she hastily descended, until reaching the Crest of the great Horse-shoe Falls, over she went.

" Your lordship will imagine better than it is possible to describe the solemn magnificence of this spectacle, yet it does not exceed the moral picture exhibited at the capture of the vessel.

" The justness of the cause, the noble project of the attack, the coolness with which it was executed, and, lastly, the mercy that was shown by our brave fellows the moment the vessel was their own, are naval characteristics which reflect honour on the British empire in general, and on this noble province in particular.

" I therefore feel it my duty to request your lordship to lay my humble testimony of the merits of Captain Drew (whose intrepidity and generosity are beyond all praise) before the lords commissioners of the Admiralty, to whose liberal consideration I beg leave most earnestly but respectfully to recommend him.

" I also feel it my duty to bring before their lordships' especial consideration the case of Lieutenant Mac Cormack, who is still lying on his back completely dis-

abled; and I much fear that one of his five wounds will require the amputation of his left arm.

"This loss to a backwoodsman, upon whose manual labour his family is dependent for support, is irreparable; and I feel confident that her Majesty's government will consider that as it is highly advantageous that the Queen should be enabled to call upon the retired naval officers in this province, whenever their professional services on the Lakes may suddenly be required, so it is not only just but politic, that if disabled they should not be allowed to suffer from privations, which might tend to deter others from following their noble and patriotic example.

"Although naval or military officers, when called upon by their government, are in no way responsible for the political consequences of the daring measures they are ordered to effect, yet I cannot help assuring your lordship that the capture of the Caroline has been productive of the most beneficial consequences.

"Before it took place, American '*sympathy*' for our absconded traitors was unbridled and unchecked.

"The state arsenals were openly plundered, subscriptions were openly collected, provisions as well as munitions of war were openly supplied; and while her Majesty's government in Upper Canada was subjected to enormous expenses, and while the unoffending inhabitants of this province were kept in a state of painful anxiety, the inhabitants of the American frontier were actually amusing themselves at our sufferings, and were even making parties of pleasure for the purpose of inspecting the preparations on Navy Island.

"No sooner, however, was the Caroline in flames

than a sudden excitement prevailed, but it was the excitement of *fear*. The women fled from the villages on the coast, people who had fancied themselves bed-ridden decamped, and the citizens of Buffalo evinced the greatest possible consternation for the safety of their town.

" Immense expenses were immediately incurred by the Americans for the purpose of self-defence; and considering how much Upper Canada had been obliged to expend on this principle, I trust your lordship will admit that it was salutary, politic, and above all, *just*, to make our American *allies* participate in the lamentable consequences of their own *perfidy* towards us.

" Of course there were not wanting those who argued that the excitement produced by this bold act of justice would irritate our assailants. However, it may be observed that it is impossible to make war palateable to one's enemy, and that indeed it is not advisable it should be so.

" The result has now spoken for itself. The pirates have fled from Navy Island; their plan of invading the Niagara frontier has been abandoned, and our allies, arrantly ashamed of themselves, are now merely our enemies from that odd principle in human nature which invariably makes men hate and envy those whom their consciences tell them they have injured.

" Our militia forces on the frontier have nearly all been allowed to retire to their homes; but as the flotilla of boats requires to be guarded, and as I think it highly adviseable that some officer of experience should watch the naval movements of the Americans, I have directed Captain Drew, by two orders, (copies of which are here-

with enclosed,) to continue his pendant flying *until I shall have had time to communicate* to your lordship.

"As the expense of this precautionary observation will be very trifling, I would strongly recommend that it should be continued for at least a year; for as several vessels are now building on the Lake, it would be prudent that we should have some one whose duty it is to ascertain whether any suspicious alteration is effected in their structure.

"Trusting that your lordship will offer to the lords commissioners of the Admiralty my apology in case I should have given any orders they may see reason to disapprove of, and that you will be so good as to lay before them Colonel Macnab's recommendation in favour of Lieutenant Elmslie, a member of my executive council, to whose intrepidity I can myself bear testimony,

"I have, &c.

(Signed) "F. B. HEAD.

"The Right Hon. Lord Glenelg,
&c. &c. &c."

III.

Speech of Sir F. B. Head to the Legislative Council at Toronto.

"Honourable Gentlemen, and Gentlemen,

"I regret to say that there still exists among a portion of the American people so strong a desire to force upon the free inhabitants of this province republican institutions, that with scarcely an exception every Go-

vernment arsenal from Lake Champlain to Lake Michigan, has within the last two months been broken open and plundered, to furnish arms for the invasion of this portion of the British Empire; and however the circumstance may be explained, it is certainly a remarkable fact that all these robberies have been effected without the sacrifice of a single life, and without even the imprisonment of the person who is notoriously the instigator of these acts.

"The wrong which citizens of the neighbouring states have committed, by thus attempting to dictate to the inhabitants of Upper Canada the form of government under which they are henceforward to exist, will, as the assertion of a new theory, be condemned by the civilized world as severely as in practice it has been repudiated by the people of this province.

"What right, it will be calmly asked, have the inhabitants of one country, armed with the artillery and weapons of their Government, to interfere with the political institutions of another? What excuse, it will be gravely considered, had citizens of the United States for invading the territory of Upper Canada?

"When our coloured population were informed that American citizens, sympathising with their sufferings, had taken violent possession of Navy Island, for the double object of liberating them from the domination of British Rule, and of imparting to them the blessings of republican institutions, based upon the principle that all men are born equal, did our coloured brethren hail their approach?—No! on the contrary, they hastened as volunteers in wagon loads to the Niagara frontier to beg from me permission, that in the intended

attack upon Navy Island, they might be permitted to form the forlorn hope; in short, they supplicated that they might be allowed to be foremost to defend the glorious institutions of Great Britain.

"When the mild aborgines of this continent, who live among us uninjured and respected, were informed that citizens of the United States, disregarding the wampum belt which was sacredly connecting them with Great Britain, had invaded our shores to sympathise with the sufferings of the red tenants of the forest, and to offer them American friendship instead of the enmity of British rule, did our Indian brethren hail their approach? No; their chiefs and warriors instantly painted their faces for battle, and with rifles in their hands these free-born defenders of their native soil appeared before me with a solitary request, namely, that in case of their death, their wives and children might be pensioned. The Six Nations, Indians, the Missisaguas, the Chippewas, the Hurons, and the Ottawas, spontaneously competed with each other in a determination to die, if necessary, in defending the British Government, under whose parental protection they and their fathers had been born.

"When the Canadian farmers and yeoman of British origin were informed that citizens of the United States, sympathising with their sufferings, had in three instances taken forcible possession of her Majesty's territory, for the purpose of liberating them from British domination; that with this object in view the American leaders had issued proclamations, promising to each liberator three hundred acres of the best lands of Upper Canada, with one hundred dollars in silver;

that the American self-styled general in command of the liberators had called upon the citizens of Upper Canada '*to free their land from tyranny*,' '*to rally round the standard of liberty*,' '*to lay down their arms*,' in which case it was beneficently promised to them that '*that their persons and property should be protected*,' and that if they would '*cease resistance all would be well with them*;'—did the Canadian inhabitants hail their approach? No; on the contrary, their brave and loyal militia, although totally deprived of the assistance of her Majesty's regular troops, rose simultaneously, and, regardless of every private consideration, wherever the invaders appeared thousands of bayonets were seen bristling on our shore ready to receive them. On the eastern, as well as on the western frontier, but one feeling prevailed; it was a noble determination on the part of free men to conquer or die in the defence of their religion, their constitution, their character, their families, and their farms. Yet, notwithstanding their excited feelings, when the American citizens, who from an armed schooner had cruelly battered the town of Amherstburgh, fell into the hands of the brave militia of the western district, (in which not a single rebel had been in arms,) did these prisoners fall victims to popular fury, or were they even insulted? No; the instant our invaders surrendered to British power they experienced that mercy which adorns the British name; their wounds were healed at our hospitals; and from the western extremity of Upper Canada they were conducted unharmed through the province, safe under the protecting ægis of our laws.

"When a band of rebels, defeated in their cruel ob-

ject to reduce this capital to ashes in the depth of a Canadian winter, were, after the conflict at Gallows Hill, brought to me as prisoners on the field, was any distinction made between American-born and our other Canadian subjects? No; all were released. Before the assembled militia of Upper Canada all were equally pardoned. And though many of our brave men, smarting under feelings natural at the moment, evidently disapproved of the decision, yet all bowed in obedience to the administrator of their laws; and under the noble influence of monarchical government, they allowed their assailants to pass uninjured through their ranks.

"When the gallant inhabitants of the provinces of New Brunswick and Nova Scotia received intelligence that American citizens had commenced an attempt to free the British North American Colonies '*from the tyranny of British rule*,' did they rejoice at the event? No; a burst of loyalty resounded through their lands, and a general desire to assist us was evinced.

"If Upper Canada was merely a young healthy province, with no protection on the continent of America but its character, its industry, and the agricultural difficulties it has to contend with, its filial attachment to its Government, the bravery it has shown in its defence, and the mercy it has extended to its captured assailants, ought to be sufficient to make its aggressors ashamed of their late attempt to force upon their neighbour institutions which they conscientiously and unequivocally reject. But when it is considered that Upper Canada is an integral portion of the British Empire, and that the two countries are at this moment bound together by a solemn treaty of peace, the faithless attack of citizens of the

United States upon the province, after it had completely quelled a slight domestic insurrection, will, if persisted in, excite feelings among the generous nations of Europe, which will add but little to the character of republican institutions; for surely the smile of a nation should not be more dreaded than its frown, or its extended hand be more fatal than its uplifted arm.

"When the facts just stated are clearly comprehended by intelligent men, how will the American citizens, who have so wantonly attacked the British Empire, find it possible to explain, that the province of Upper Canada required them to interfere in its concerns?

"But it now seems to be admitted that our invaders have been deceived, that they falsely estimated the Canadian people, and that they have at last learned that the yeomen, farmers, militia, Indians, and coloured population of this province, prefer British institutions to democracy; nevertheless, as an ex poste facto excuse for the sinful and repeated invasion of the province, it is urged that the crew of the Caroline steam-boat, which was captured more than fourteen days after Navy Island had been forcibly taken from us, have been 'assassinated,' and that 'an extraordinary outrage' has been committed upon the Americans by our militia, who so ably and gallantly cut out that pirate vessel.

"If Navy Island had been violently taken possession of by Canadian rebels, instead of by a body of Americans, armed, fed, and commanded by American citizens, —if these Canadian rebels had then thought proper to invade the United States, to break open half a dozen of their State arsenals, to rob each of many hundred

stand of arms, to plunder from the American Government twenty-two pieces of cannon, and to set the laws and authorities of the Republic at defiance,—could any reasonable man declare that we should offer, or that we could be supposed to intend to offer, any offence to our allies, if in a moment of profound peace we were to pursue in the Niagara river the guilty vessel which had transported to the island these American arms, and capture her, whether she were in British waters, in American waters, moored to the British shore or to the American shore? Would it not be our bounden duty to the American people to capture this pirate vessel? And if we were to fail to do so might not our allies hold us responsible for acts of such unprovoked aggression committed upon them by British subjects inhabiting a British island?

"Again, supposing that the Americans were to co-operate with us (as under such circumstances of course they would have done) in chasing this pirate vessel, could it be supposed for a moment that each power would only be permitted by the other to capture her so long only as she continued in their own half of the river; and that if our British boatmen, at the peril of their lives, were to capture the vessel in American waters or on the American shore, it would be considered by the Americans as a 'violent outrage?' There can be no doubt in the mind of any reasonable man, that we should only perform our duty to the Americans by destroying a vessel belonging to our own islanders, which had so grossly insulted them, which had completely overpowered their Government, and which in a moment of peace had so flagrantly violated the laws of

nations. And if we should be justified in capturing the vessel of our islanders, on account of the wrongs they had perpetrated upon the American nation, surely we should have additional right to do so on our own account, if the twenty-two pieces of cannon forcibly wrested from the American Government had not only been employed for a fortnight in firing from the island upon the peaceable subjects of her Majesty, but to our certain knowledge were about to be transported to our main land for the purpose of committing murder, arson, and robbery, in this province.

"It is, however, declared by our allies, that because these lawless possessors of our island turned out to be American citizens, and because their own Government was totally unable to control them, the capture of the vessel by us became a 'violent outrage.'

"It would not have been considered by them an outrage, had we by force of arms prevented Canadian islanders from violating American arsenals, from insulting American authorities, and from firing twenty-two pieces of the United States cannon upon British subjects; but it *is* considered as an outrage for us to prevent an *American* vessel from enabling *American citizens* to commit these unparalleled aggressions.

"In the history of this province the capture of the Caroline (whoever might have been her crew) will, I maintain, be respected by future ages as a noble proof of the sincerity of the Canadian people to fulfil their engagements by crushing a pirate force which, in violation of existing treaties, was insulting from a British island their American allies, and which General Arcularius, Governor Mason, Governor Marcy, the President

and Legislature of the United States, had absolutely found too powerful for the executive force of the Republic to control.

"The fact that the pirate force was composed of and commanded by American citizens adds to the aggression committed against the Canadians, but subtracts nothing from the crime of robbery perpetrated upon the United States arsenals, unless indeed the American people or the American authorities should deem it proper to declare that it was no robbery at all, for that the aggression was approved of, that the State cannon and State muskets were knowingly and wilfully lent to the invaders of Navy Island for the purpose of forcing republican institutions upon the people of Upper Canada, and that under these circumstances (which are incredible) the attack of Canadian militia upon the American citizens who were on board the Caroline was 'an extraordinary outrage.'

"But supposing for a moment this false reasoning to be unanswerable,—supposing even that the commission of the outrage were to be admitted by the Canadians, and that it were also to be admitted by them that the capture by Canadians of a small steam-boat moored to the American shore was an outrage equal in magnitude to the capture of Navy Island by American citizens,—still, to make the Canadian outrage as flagrant as that which had been committed upon us by citizens of the United States, it would have been necessary for the Canadians, after they had taken possession of the Caroline, to have fired from her deck with twenty-two pieces of cannon for more than a fortnight upon the American shore; and even then, though the outrages

would certainly have been rendered apparently equal, still the former would have been an outrage of retaliation upon an enemy, the latter an outrage of unprovoked attack upon a friend.

"There are two facts which the American nation have not power to deny:—

"1st. That it is their interest as well as their duty to fulfil their treaties:

"2nd. That if their people be permitted to rob the United States' arsenals in order to invade a friendly power, the lawless body will very soon find out that it is easier to plunder their own wealthy defenceless citizens, than the poor, brave, well-armed people of Upper Canada.

"I have felt it to be the especial duty of the legislative station I hold, not only to protest against the unprincipled invasion of this province by its allies, but to vindicate the inhabitants from the unreasonable accusation which without due inquiry was made against them by the federal government of the United States, of having 'assassinated' the crew of the Caroline.

"The memoir of the attack which has just been made upon us offers a moral to the mother-country, which I feel confident will create throughout the empire considerable sensation; for although the old country is not without its share of human misapprehension and prejudice, particularly as regards its transatlantic possessions, yet, when facts are clearly submitted to it, its judgment is always sound, and its verdict nobly impartial.

"The struggle on this continent between monarchy and democracy has been a problem which Upper Canada has just solved.

" It had been very strongly argued, even in England, that Democracy was the only form of government indigenous to to the soil of America, and that Monarchy was a power which required here artificial support.

" With a view to subvert this theory, the whole of the Queen's troops were allowed to retire from the province, and the result, as had been anticipated, was that the people of Upper Canada were no sooner left uncontrolled than they proclaimed themselves in favour of monarchical institutions. Surrounded by temptations on almost every side, they indignantly rejected them all. In a few hours they successfully put down insurrection in their own land; and when American citizens, astonished as well as disappointed at their loyalty, determined to *force* them to become Republicans, people of all religions and of all politics rushed to the frontier to die in defence of their glorious constitution.

" The conduct of the militia of Upper Canada attracted the attention of the gallant and loyal inhabitants of New Brunswick and Nova Scotia, whose legislatures have done themselves, as well as this province, the honour of promptly expressing their unqualified approbation of the attachment which has been evinced here to the British constitution.

" When these facts shall arrive before the English people, and when they shall also have taken into their consideration the devoted and unalterable attachment which the British population of Lower Canada have evinced for our revered institutions, surely they will come to the conclusion, that the concurrent opinions of her Majesty's North American Colonies respecting the

relative advantages between monarchy and democracy in America must be sounder than their own can be, inasmuch as eye-witnesses judge more correctly than people can possibly do who are living four thousand miles off.

"The people of England will, I trust, not fail to admire the calmness, the resolution, the generosity, and the honourable subjection to their laws, which have distinguished the inhabitants of Upper Canada; and, on the other hand, they certainly cannot fail to observe, that the republican project of our English reformers, namely, to make the people bit by bit responsible only to themselves, has ended in America by the Government of the United States confessing its total inability to restrain the passions of its citizens, to guard its State arsenals, or to maintain its treaties with its oldest and most natural ally.

"Lastly, the British people will, I trust, observe with considerable alarm, that the leading advocates for organic changes in our institutions are either at this moment lying in our gaols as traitors, or, from having absconded are self-banished from the province; in short, that their pretended efforts to obtain in Upper Canada what they called 'LIBERTY FOR THE PEOPLE' has ended in a most infamous and self-interested attempt to plunder private property, rob the banks, and burn to ashes the rising capital of their country!

"With this experience before our eyes, I must confess I join with the legislature and people of Upper Canada in shuddering at the abused name of '*reform*,' just as we now recoil with abhorrence when we hear suddenly pronounced the word '*sympathy*.'

"As my successor is hourly expected here, I return to the mother-country as I left it, totally unconnected with party or with politics: but in retirement I shall remember the lessons which the people of Upper Canada have taught me. And I feel it my duty to declare, that I leave the continent of America with my judgment perfectly convinced, that the inhabitants of Europe, Asia, and Africa are right in their opinion that all men are not by nature equal; that the assertion of the contrary in America is a fallacy; and that talent, industry, and character must elevate individuals as they do nations in the graduated scale of society.

"May the resplendent genius of the British Constitution ever continue to illuminate this noble land, and, animated by its influence, may its inhabitants continue to be distinguished for humility of demeanour, nobility of mind, fidelity to their allies, courage before their enemy, mercy in victory, integrity in commerce, reverence for their religion, and, at all times and under all circumstances, implicit obedience to their laws.

"Honourable Gentlemen, and Gentlemen, farewell."

IV.

Message of the American President at the close of the year 1838.

"I had hoped, that the respect for the laws and regard for the peace and honour of their own country, which have ever characterized the citizens of the United States, would have prevented any portion of them from using any means to promote insurrection in the territory of a power with which we are at peace, and with which the United States are desirous of maintaining the most friendly relations. I regret, deeply, however, to be obliged to inform you, that this has not been the case. Information has been given to me, derived from official and other sources, that many citizens of the United States have associated together to make hostile incursions from our territory into Canada, and to aid and abet insurrection there, in violation of the obligations and laws of the United States, and in open disregard of their own duties as citizens. This information has been, in part, confirmed by a hostile invasion actually made by citizens of the United States, in conjunction with Canadians and others, and accompanied by a forcible seizure of the property of our citizens and an application thereof to the prosecution of military operations, against the authorities and people of Canada.

"The results of these criminal assaults upon the peace and order of a neighbouring country have been, as was to be expected, fatally destructive to the misguided or deluded persons engaged in them, and highly injurious to those, in whose behalf they are professed

to have been undertaken. The authorities in Canada, from intelligence received of such intended movements among our citizens, have felt themselves obliged to take precautionary measures against them, have actually embodied the militia, and assumed an attitude to repel the invasion to which they believed the colonies were exposed from the United States. A state of feeling on both sides of the frontier has thus been produced, which called for prompt and vigorous interference. If an insurrection existed in Canada, the amicable dispositions of the United States towards Great Britain, as well as their duty to themselves, would lead them to maintain a strict neutrality, and to restrain their citizens from all violations of the laws which have been passed for its enforcement. But this Government recognizes a still higher obligation to repress all attempt on the part of its citizens to disturb the peace of a country, where order prevails, or has been re-established. Depredations by our citizens upon nations at peace with the United States, or combinations for committing them, have, at all times, been regarded by the American Government and people with the greatest abhorrence. Military incursions by our citizens into countries so situated, and the commission of acts of violence on the members thereof, in order to effect a change in its government, or under any pretext whatever, have, from the commencement of our Government, been held equally criminal on the part of those engaged in them, and as much deserving of punishment as would be the disturbance of the public peace by the perpetration of similar acts within our own territory.

"By no country or persons have these invaluable

principles of international law, principles, the strict observance of which is so indispensable to the preservation of social order in the world, been more earnestly cherished or sacredly respected than by those great and good men who first declared, and finally established, the independence of our own country. They promulgated and maintained them at an early and critical period in our history; they were subsequently embodied in legislative enactments of a highly penal character, the faithful enforcement of which has hitherto been, and will, I trust, always continue to be, regarded as a duty inseparably associated with the maintenance of our national honour. That the people of the United States should feel an interest in the spread of political institutions as free as they regard their own to be, is natural; nor can a sincere solicitude for the success of all those who are at any time, in good faith, struggling for their acquisition, be imputed to our citizens as a crime. With the entire freedom of opinion, and an undisguised expression thereof on their part, the Government has neither the right, nor, I trust, the disposition, to interfere. But, whether the interest or the honour of the United States require that they should be made a party to any such struggle, and by inevitable consequence to the war which is waged in its support, is a question, which, by our constitution, is wisely left to Congress alone to decide. It is, by the laws, already made criminal in our citizens to embarrass or anticipate that decision by unauthorized military operations on their part. Offences of this character, in addition to their criminality, as violations of the laws of our country, have a direct tendency to draw down upon our own citizens at large, the multiplied

evils of a foreign war, and expose to injurious imputations the good faith and honour of the country. As such they deserve to be put down with promptitude and decision. I cannot be mistaken, I am confident, in counting on the cordial and general concurrence of our fellow-citizens in this sentiment. A copy of the proclamation which I have felt it my duty to issue, is herewith communicated. I cannot but hope, that the good sense and patriotism, the regard for the honour and reputation of their country, the respect for the laws which they have themselves enacted for their own government, and the love of order for which the mass of our people have been so long and so justly distinguished, will deter the comparatively few who are engaged in them, from a further prosecution of such desperate enterprises. In the mean time, the existing laws have been, and will continue to be, faithfully executed, and every effort will be made to carry them out to their full extent. Whether they are sufficient or not to meet the actual state of things on the Canadian frontier, it is for Congress to decide."

No. V.

Message of the American President at the close of the year 1839.

" There is every reason to believe, that disturbances like those which lately agitated the neighbouring British provinces will not again prove the sources of border contentions, or interpose obstacles to the continuance of that good understanding which it is the mutual in-

terest of Great Britain and the United States to preserve and maintain.

" Within the provinces themselves tranquillity is restored, and on our frontier that misguided sympathy in favour of what was presumed to be a general effort in behalf of popular rights, and which in some instances misled a few of our more inexperienced citizens, has subsided into a rational conviction strongly opposed to all intermeddling with the internal affairs of our neighbours. The people of the United States feel, as it is hoped they always will, a warm solicitude for the success of all who are sincerely endeavouring to improve the political condition of mankind. This generous feeling they cherish towards the most distant nations; and it was natural, therefore, that it should be awakened with more than common warmth in behalf of their immediate neighbours. But it does not belong to their character, as a community, to seek the gratification of those feelings in acts which violate their duty as citizens, endanger the peace of their country, and tend to bring upon it the stain of a violated faith towards foreign nations. If, zealous to confer benefits on others, they appear for a moment to lose sight of the permanent obligations imposed upon them as citizens, they are seldom long misled. From all the information I receive, confirmed to some extent by personal observations, I am satisfied that no one can now hope to engage in such enterprizes without encountering public indignation, in addition to the severest penalties of the law.

" Recent information also leads me to hope that the emigrants from her Majesty's provinces, who have sought

refuge within our boundaries, are disposed to become peaceable residents, and to abstain from all attempts to endanger the peace of the country which has afforded them an asylum. On a review of the occurrences on both sides of the line, it is satisfactory to reflect, that in almost every complaint against our country the offence may be traced to emigrants from the provinces who have sought refuge here. In the few instances in which they were aided by citizens of the United States, the acts of these misguided men were not only in direct contravention of the laws and well-known wishes of their own government, but met with the decided disapprobation of the people of the United States.

"I regret to state the appearance of a different spirit among her Majesty's subjects in the Canadas. The sentiments of hostility to our people and institutions, which have been so frequently expressed there, and the disregard of our rights which have been manifested on some occasions, have, I am sorry to say, been applauded and encouraged by the people, and even by some of the subordinate local authorities of the provinces. The chief officers in Canada fortunately have not entertained the same feeling, and have probably prevented excesses that must have been fatal to the peace of the two countries.

"I look forward anxiously to a period when all the transactions which have grown out of this condition of our affairs, and which have been made the subjects of complaint and remonstrance by the two governments respectively, shall be fully examined, and the proper satisfaction given where it is due from either side."

VI.

Extract from Message of American President, at the close of the year 1841.

"I regret that it is not in my power to make known to you an equally satisfactory conclusion in the case of the Caroline steamer, with the circumstances connected with the destruction of which, in December, 1837, by an armed force fitted out in the province of Upper Canada, you are already acquainted. No such atonement as was due for the public wrong done to the United States for the invasion of her territory, so wholly irreconcilable with her rights as an independent power, has yet been made. In the view taken by this government, the inquiry whether the vessel was in the employment of those who were prosecuting an unauthorised war against that province, or was engaged by the owner in the business of transporting persons to and from Navy Island in hopes of private gain, which was most probably the case, in no degree alters the real question at issue between the two governments. This government can never concede to any foreign government the power, except in a case of most urgent and extreme necessity, either to arrest the persons or destroy the property of those who may have violated the municipal laws of such foreign government, or have disregarded their obligations arising under the law of nations.

"The territory of the United States must be regarded as sacredly secure against all such invasions, until they shall voluntarily acknowledge their inability to acquit

themselves of their duties to others. And in announcing this sentiment, I do but affirm a principle which no nation on earth would be more ready to vindicate at all hazards than the people and government of Great Britain. If, upon a full investigation of all the facts, it shall appear, that the owner of the Caroline was governed by a hostile intent, or had made common cause with those who were in the occupancy of Navy Island, then so far as he is concerned, there can be no claim to indemnity for the destruction of his boat, which the government would feel itself bound to prosecute, since he would have acted not only in derogation of the rights of Great Britain, but in clear violation of the laws of the United States. But that is a question, which, however settled, in no manner involves the higher consideration of the violation of the laws of territorial sovereignty and jurisdiction. To recognise it as an admissible practice, that each government in its turn, upon any sudden and unauthorised outbreak on a frontier, the extent of which renders it impossible for either to have an efficient force on every mile of it, and which outbreak, therefore, neither may be able to suppress in a day, may take vengeance into its own hands, and without even a commission, and in the absence of any pressing or overruling necessity, may lead them to violate the territory of another, would inevitably lead to results equally to be deplored by both.

" When border collisions come to receive the sanction, or to be made on the authority of either government, general war must be the inevitable result. While it is the ardent desire of the United States to cultivate the relations of peace with all nations, and to fulfil all the

duties of good neighbourhood towards those who possess territories adjoining their own, that very desire would lead them to deny the right of any foreign power to invade their territory with an armed force."

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